

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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NEXTGEAR CAPITAL, INC.,

Plaintiff,

v.

ANTONIO L. GUTIERREZ; PAUL  
GUTIERREZ,

Defendants.

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: CIVIL ACTION  
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: CASE NO.: 3:18-cv-01617  
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: (Judge Mannion)  
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**PLAINTIFF, NEXTGEAR CAPITAL, INC.’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Plaintiff, NextGear Capital Inc. (“NextGear”), moves this Honorable Court for the entry of judgment in its favor because Defendants, Antonio L. Gutierrez and Paul Gutierrez (collectively, “Defendants”), cannot demonstrate the existence of a genuine issue of material fact that would prevent the entry of judgment, as a matter of law, in favor of NextGear. NextGear specifically requests that the Court enter an order granting the following forms of relief:

- 1) making a determination that the September 28, 2016 transfer of 5334 Delia Ter., East Stroudsburg, PA 18301 (the “Property”) from Defendant, Antonio Gutierrez (individually, “Antonio”), to Defendant, Paul Gutierrez (individually, “Paul”), was done in violation of Pennsylvania’s Uniform Voidable Transactions Act (the “PUVTA”);
- 2) an avoidance of the September 28, 2016 transfer of the Property from Antonio to Paul;
- 3) an injunction against any further disposition of the Property;
- 4) the appointment of James Galligan as the receiver to manage and sell the Property to satisfy NextGear’s outstanding judgment against Antonio; and

5) an award of a monetary judgment in the amount of \$150,000.00 against Defendant, Paul Gutierrez.

A brief in support of the above request has been filed contemporaneously with this motion.

**WHEREFORE**, Plaintiff, NextGear Capital, Inc. respectfully prays that this Court **GRANT** its motion as set forth above, and for such other relief as the Court may be just under the circumstances.

Respectfully submitted,

By: /s/ Nicholas M. Gaunce

Nicholas M. Gaunce

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Dated: September 19, 2019

**CERTIFICATE OF NON-CONCURRENCE**

I hereby declare under the penalties of perjury under the laws of the United States of America that counsel for Defendants was contacted on September 19, 2019 regarding the above motion, and that NextGear was unable to procure consent to its current motion despite an e-mail and telephone conference between counsel.

By: /s/ Nicholas M. Gaunce

Nicholas M. Gaunce

Dated: September 19, 2019

**DECLARATION OF FILING AND SERVICE**

I, Nicholas M. Gaunce, Esq., hereby declare that, on September 19, 2019, I caused the above motion and all supporting papers to be filed with the Court through its ECF system. I further declare that I caused a true and correct copy of this filing to be served upon the below via e-mail and the Court's ECF system:

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*Attorneys for Defendants, Antonio L. Gutierrez and Paul Gutierrez*

-and-

Borce Martinoski, Esq.  
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*Pro Hac Vice Attorney for Defendants, Antonio L. Gutierrez and Paul Gutierrez*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

By: /s/ Nicholas M. Gaunce  
Nicholas M. Gaunce

Dated: September 19, 2019